

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

LINDA J. ZIGDON, et al.,)	CASE NO. 1:09CV0050
)	
PLAINTIFFS,)	JUDGE SARA LIOI
)	
vs.)	
)	
LVNV FUNDING, LLC, et al.,)	ORDER
)	
DEFENDANTS.)	
)	

On April 23, 2010, Magistrate Judge Kenneth S. McHargh issued a Report and Recommendation (R&R) that plaintiffs' sole federal claim, brought under the Fair Debt Collection Practices Act (FDCPA), be dismissed with prejudice because it is time barred and there are no grounds for the equitable tolling of the statute of limitations with respect to that claim. The R&R further suggested that all state law claims be remanded. (*See* Doc. No. 34.)

Rather than file objections to the R&R, plaintiffs filed a motion to dismiss (Doc. No. 37) conceding that the FDCPA claims should be dismissed and seeking remand of the remaining state law claims.

The defendants have filed briefs in opposition to plaintiffs' motion to dismiss. (Doc. Nos. 39, 41, 43.) These opposition briefs do not oppose the dismissal and/or remand; rather, they seek to have this done procedurally by adopting the R&R rather than by granting plaintiffs' motion. Defendants argue that following this procedure will be in the interest of judicial economy, by giving preclusive effect to the ruling in the R&R. They argue that plaintiff is attempting to "game" the system by obtaining a ruling on their motion, but not on the R&R, so

that they will have an opportunity after remand to re-litigate matters relating to the state law claims which the Magistrate Judge has already decided without any objection from the plaintiffs.

The Court is of the view that the appropriate procedural posture is to accept the unopposed R&R pursuant to Fed.R.Civ.P. 72(b)(3), to dismiss with prejudice the sole federal claim, and to remand to the Cuyahoga Common Pleas Court all remaining state court claims. The Court will leave it to the state court to decide what, if any, preclusive effect is required by the R&R.

Accordingly, the Court hereby **ACCEPTS** the R&R; the claim brought under the Fair Debt Collections Practices Act is **DISMISSED WITH PREJUDICE** and the state law claims are **REMANDED**.

IT IS SO ORDERED.

Dated: June 9, 2010



HONORABLE SARA LIOI
UNITED STATES DISTRICT JUDGE